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October 16, 2000

REDACTED – FOR PUBLIC INSPECTION

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., CY-B402
Washington, D.C.
20554

Dear Secretary Salas:

Pursuant to the Commission's September 22, 2000, Public Notice requesting comments on the application by Verizon New England Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts (CC Docket No. 00-176), Rhythms is filing the confidential portions of its submission and a redacted version of the entire submission. As a result, enclosed are:

(a) one copy of only the portion(s) of the submission that contain confidential information, exclusive of the remainder of the submission (contained in an envelope marked "A"); and
(b) one original and two copies of the entire confidential submission in redacted form (contained in an envelope marked "B").

Please contact me at 202/955-6300 if you have any questions concerning these materials.

Sincerely yours,

Mary Jean Fell / el

Mary Jean Fell

Enclosures

cc: Susan Pie

Janice Myles (12 copies of redacted submission only)

International Transcription Service (1 copy of redacted submission only)

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ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
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Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a/ Verizon Long Distance), NYNEX Long Distance Company (d/b/a/ Verizon Enterprise Solutions), and Verizon Global Network, Inc. (collectively "Verizon") for Authorization To Provide In-Region, InterLATA Services in the State of Massachusetts	)	Docket No. 00-176

RHYTHMS NETCONNECTIONS INC.
COMMENTS IN OPPOSITION TO VERIZON'S APPLICATION
FOR 271 AUTHORITY IN THE STATE OF MASSACHUSETTS

REDACTED—FOR PUBLIC INSPECTION

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Dated: October 16, 2000

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Rhythms NetConnections Inc., and its affiliate, Rhythms Links Inc. (collectively "Rhythms"), submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice issued on September 22, 2000, in connection with the application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc (collectively "Verizon") for authorization to provide in-region, interLATA service in the State of Massachusetts, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271.

Rhythms, a participant in the state proceedings that considered Verizon-Massachusetts' compliance with the competitive checklist, is a nationwide provider of high-performance, high-speed data services, primarily utilizing digital subscriber line ("DSL") technology.[1] Rhythms

[1] Declaration of Robert Williams in Support of Rhythms Comments in Opposition to Verizon's Application for 271 Authority in the State of Massachusetts at ¶ 7. ("Williams Declaration"), attached hereto as Exhibit 1.

provides data networking solutions at a reasonable cost to the consumers across the country and in Massachusetts.[2]

I. INTRODUCTION

An undisputed objective of the Telecommunications Act of 1996 is to open all telecommunications markets to competition. This laudable goal was not limited to opening traditional voice services markets to competition, but, as the Commission repeatedly recognized, to open advanced data services to vigorous competition as well.[3] As a result, this Commission must find that Verizon has irreversibly opened its telecommunications markets – both for traditional voice services and advanced data services – to competition before Verizon's application to provide long distance services in Massachusetts can be approved.[4]

Rhythms' interest in this matter is to see that the telecommunications market in Massachusetts is irreversibly open to competition for advanced data services. As Rhythms does not provide long distance services, it has no interest in blocking Verizon's entry into long distance in Massachusetts. Instead, Rhythms seeks to ensure that before Verizon is given free reign to provide long distance services -- and therefore no longer has the specter of section 271 approval looming as a motivator – that Verizon's nondiscrimination obligations are fulfilled and the Massachusetts market is fully and irreversibly open to competition.

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[2] The data services provided by Rhythms are included in the category of "advanced services" which the Commission defined as "high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications using any technology." *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report & Order & Further Notice of Proposed Rulemaking, CC Docket 98-147 at n. 2 (rel. March 31, 1999) ("*Advanced Services Order*").

[3] *Id* at ¶ 1; *In the Matter of Application of SBC Communications Inc. To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65 (rel. June 30, 2000)("*SWBT Texas Order* ")at ¶¶ 4-6.

[4] *SWBT Texas Order* at ¶ 6.

A. Procedural History

From the outset, Rhythms was involved in the state proceedings in Massachusetts on Verizon's (formerly Bell Atlantic's) application to provide interLATA services. Verizon notified the Massachusetts Department of Transportation and Energy ("DTE") on May 24, 1999, of its intention to request section 271 authority. On June 29, 1999, the DTE opened its initial inquiry into Verizon's compliance with section 271's requirements. On August 30, 1999, Verizon certified to the DTE that all checklist items could be considered during technical sessions prior to completion of OSS testing. On November 19, 1999, the DTE approved KPMG's Master Test Plan for OSS testing. During November and December, 1999, the DTE conducted technical sessions on Verizon's checklist compliance where witness testimony was presented by Verizon and numerous CLECs, including Rhythms. On January 14, 2000, the DTE adopted the New York Public Service Commission's carrier-to-carrier guidelines as the performance metrics for the Master Test Plan and for evaluating Verizon's checklist compliance with section 271. On February 16, 2000, the DTE denied a request by AT&T (supported by other CLECs) to reject KPMG's proposal to weaken its volume and stress testing of Verizon's pre-order and order OSS functions and staff capacity. On May 12, 2000, the DTE denied CLEC requests that volume tests for pre-order, order and provisioning OSS functions be conducted on Local Service Ordering Guidelines Release 4.

On July 18, 2000, CLECs submitted detailed comments addressing whether Verizon had met the standards established in the FCC's Bell Atlantic New York 271 Order and in response. On August 4, 2000, Verizon filed supplemental affidavits in response to those filings and subsequently additional technical session were held by the DTE during the August and September, 2000. These technical sessions did not include closing briefs, just oral closing arguments, and issues that were addressed in ongoing proceedings before the DTE were not permitted to be addressed at the technical sessions (including issues relating to line sharing, DSL, and Verizon's collocation at remote terminals tariff offering).

Following cross-examination of KPMG's witnesses at the technical sessions, which revealed that KPMG failed to validate any of Verizon's DSL data or metrics, on September 1, 2000, Rhythms and Covad jointly filed a motion requesting that the DTE order KPMG to validate Verizon's DSL metrics. On September 5, 2000, the DTE issued an order adopting a Performance Assurance Plan, which was modeled on the PAP adopted in New York, and on September 22, 2000, the DTE approved Verizon's revised PAP. On September 25, 2000, Rhythms filed a motion for reconsideration of the DTE's orders approving the Performance Assurance Plan. AT&T filed Motions for Clarification and Reconsideration Regarding Verizon's Revised Performance Assurance Plan, which were filed on Thursday, September 28, 2000.

On September 22, 2000 Verizon submitted its Application to provide long distance services in Massachusetts to the Commission. In its Application and attached Declarations, Verizon relied heavily on what it had done in New York a year earlier. Not surprisingly, Verizon asserted that it now had accomplished in Massachusetts what it previously had done in New York.

With respect to the provision of xDSL loops, rather than focus on ensuring that its performance comports with the Act's and Commission's non-discrimination requirements, Verizon instead relies on unverified data and meaningless excuses for its poor xDSL loop performance. Instead of attempting to remedy the short-comings in its DSL performance, Verizon suggests that CLEC's expectations are too high – that CLECs want "absolute perfection" from Verizon. This assertion is plainly absurd. Rhythms is not looking for perfection, just that Verizon meet its obligations under the 1996 Act prior to receiving approval of its 271 application.

B. Rhythms' Interest in This Proceeding

Rhythms' involvement in the Massachusetts 271 process was triggered by its very real business needs. To provide DSL services to the consumers of Massachusetts, Rhythms depends on Verizon for important interconnection and UNEs, each of which must be provided to CLECs on nondiscriminatory terms pursuant to section 271. First, Rhythms requires copper loops without interferors such as load coils and repeaters.[5] In addition, in order to provide DSL services to consumers quickly and with less cost, Rhythms must have access to the high-frequency portion of the local loop in order to line share.[6] Second, Rhythms must collocate its equipment at Verizon premises where Verizon's copper facilities terminate.[7] Finally, Rhythms often requires unbundled transport facilities, linking Rhythms' service centers to its collocation arrangements in Verizon's central offices.[8]

C. Verizon's Burden in Establishing Compliance with Section 271

The Commission consistently has reiterated that the burden of proof in 271 proceedings rests with the ILEC[9] and that the circumstances of each proceeding will vary depending on the competitive circumstances in the state.[10] Thus, at a minimum, Verizon must demonstrate to this Commission that it has "fully implemented the competitive checklist"[11] and "is offering

[5] Williams Declaration at ¶ 8.

[6] *Id.*.

[7] *Id.*.

[8] *Id.*.

[9] *In the Matter of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (rel. Dec. 22, 1999) ("*Bell Atlantic New York Order*") at ¶ 42 ("the BOC applicant retains at all time the ultimate burden of proof that its application satisfies all of the requirements of section 271.") and ¶ 52; *SWBT Texas Order* at ¶ 52.

[10] *Bell Atlantic New York Order* at ¶ 46; *SWBT Texas Order* at ¶ 46.

[11] *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44

interconnection and access to network elements on a nondiscriminatory basis."[12] In order to make this showing, Verizon is compelled to demonstrate that it provides CLECs with interconnection and access to network elements in "substantially the same time and manner" that it provides them to itself in connection with its own retail offerings.[13] If there is no retail analogue with which to compare CLEC's access with Verizon's access, Verizon instead must demonstrate that the access it provides to CLECs offers them "a meaningful opportunity to compete."[14] The "substantially the same time and manner" standard and the "reasonable opportunity to compete standard" are meant to be comparable, as the "meaningful opportunity to compete" standard is simply a proxy for determining whether access is nondiscriminatory.[15]

While Verizon uses its New York application as a template, simply indicating that it has done in Massachusetts what it did in New York, the Commission must reject this simplistic approach. Each application to provide interLATA services must be viewed on its own merit considering "the totality of the circumstances, including the origin and quality of the information" provided.[16] The marketplace has changed dramatically since Verizon submitted it New York 271 application one year ago and the competitive landscape in Massachusetts is distinct from that in New York. Consequently, it is not enough for Verizon simply to demonstrate that it has done in Massachusetts what was done in New York. Instead, Verizon's application must be evaluated in light of the Massachusetts-specific record that was presented to the Commission on September 22, 2000. Specifically, with respect to DSL, the Commission was clear in its New York Order that subsequent applications would need to show more than what

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12 *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44.

13 *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44.

14 *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44.

15 *Bell Atlantic New York Order* at ¶ 45; *SWBT Texas Order* at ¶ 45 (In both of these Orders, the Commission specifically noted that it did not view the "'meaningful opportunity to compete' standard to be a weaker test than the 'substantially the same time and manner' standard.").

Bell Atlantic-New York presented last fall.[17] Verizon simply fails to do what must be done with respect to DSL issues to receive section 271 authority in Massachusetts.

Significantly, there are new obligations with which Verizon must comply that were not in place at the time its application for provision of interLATA services in New York was approved. The *UNE Remand Order*[18] and *Line Sharing Order*[19] establish new unbundling obligations for ILECs. In exempting Verizon from compliance with the requirements of these Orders for purposes of its New York 271 application, the Commission made it abundantly clear that future applicants would be required to demonstrate compliance in order to meet the requirements of item 2 of the competitive checklist.[20] Similarly, in the *SWBT Texas Order*, the Commission found that SWBT need only comply with those rules that were in effect when SWBT filed its application with the Commission in February, 2000.[21] As Verizon is well aware, complying with these Commission Orders now, however, is a prerequisite for its section 271 approval in Massachusetts, because these Orders are no longer "new" but currently are in effect.[22] Thus, simply because Verizon was permitted to have its application considered without reference to these obligations in the New York evaluation, it cannot expect to skip by in this proceeding. The

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16 *Bell Atlantic New York Order* at ¶ 46; *SWBT Texas Order* at ¶ 46.

17 *Bell Atlantic New York Order* at ¶ 330.

18 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC-99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999)("UNE Remand Order").

19 *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order, and Fourth Report and Order, 14 FCC Rcd 20912 (1999) (*"Line Sharing Order"*).

20 *Bell Atlantic New York Order* at ¶ 31. The *FCC Texas Order* is likewise clear that the *UNE Remand* and *Line Sharing Orders* must be complied with as a prerequisite for 271 approval. *FCC Texas Order* at ¶¶ 28-33.

21 *SWBT Texas Order* at ¶33.

22 The *UNE Remand Order* was adopted by the FCC on September 15, 1999, it was released on November 5 and published in the Federal Register. All of the obligations in that Order became effective by January 18, 2000. Likewise, the FCC's *Line Sharing Order* was adopted by the Commission on November 18, 1999 and released on December 9. It was published in the Federal Register and became fully effective on June 9, 2000, with its unbundling requirements effective even earlier, on February 10, 2000. BA-MA has sufficient notice of its obligations under these Orders and therefore the Department must consider whether BA-MA fully complies with these Orders in evaluating BA-MA's 271 application.

more rigorous evaluation by the Commission during the SWBT Texas 271 proceeding makes these obligations very clear in the context of section 271.[23]

The *UNE Remand Order* reiterates and expands upon the Commission's long-standing determination that the obligation to provide unbundled access to loops includes the obligation to provide access to xDSL-capable loops, regardless of whether those loops are served on remote terminals or Digital Loop Carrier ("DLC") facilities.[24] Specifically, the *UNE Remand Order* modified the definition of a local loop

> to include all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as DSLAMs) owned by the incumbent LEC, between an incumbent LEC's central office and the loop demarcation point at the customer premises.[25]

In addition, under the *UNE Remand Order*, BA-MA must unbundle subloops, which are the "portions of the loop that can be accessed at terminals in the incumbent's outside plant."[26] A broad definition of subloops was applied to allow "requesting carriers maximum flexibility to interconnect their own facilities" at technically feasible points to "best promote the goals of the Act."[27] Thus, the ability for CLECs to access unbundled subloop, as defined by the Commission, is vital for the further deployment of advanced services to Massachusetts consumers, particularly those served by fiber.

Verizon also must comply fully with the requirements to permit collocation at remote terminals as required by the *UNE Remand Order*.[28] The Commission recognized that access to

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23 *SWBT Texas Order* at ¶¶ 282-300.

24 *UNE Remand Order* ¶¶ 102, 190-191, 218. In the *UNE Remand Order*, the Commission also determined that CLECs should have unbundled access to loop make-up information in any incumbent database, system or records to order loops effectively. *Id.* at ¶¶ 426-28.

25 *Id.* at ¶ 167.

26 *Id.* at ¶ 206.

27 *Id.* at ¶ 207.

28 *Id.* at ¶ 215-218.

copper facilities is essential for DSL competitors and, as a result, sought to ensure access to copper facilities by requiring collocation at remote terminals.[29] The Commission determined that "the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office."[30] Collocation at remote terminals is necessary "where the incumbent multiplexes its copper loops at a remote terminal to transport the traffic to the central office over fiber DLC facilities,"[31] because "a requesting carrier's ability to offer xDSL service to customers served over those facilities will be precluded, unless the competitor can gain access to the customer's copper loop before traffic on that loop is multiplexed."[32] The Commission further clarified that if an ILEC does not provide competitors with the ability to install their own DSLAMs in remote terminals or fails to provide competitors with spare copper, the ILEC must allow competitors to unbundled access to its DSLAMs.[33]

In the *Line Sharing Order*, the Commission determined that the high-frequency portion of the local loop is a separate UNE subject to the unbundling requirements of the Act and subsequent rules and regulations.[34] This is a further obligation with which Verizon must comply fully. This obligation must be read consistent with the obligations in the *UNE Remand Order* that require "the incumbent to provide loops with all their capabilities intact"[35] because "[w]ithout access to [xDSL-capable] loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced services."[36]

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29 *Id.*
30 *Id.*at ¶ 218.
31 *Id.*
32 *Id.*
33 *Id.* at ¶ 313.
34 *See* 47 C.F.R. § 51.319.
35 *UNE Remand Order* at ¶ 191.
36 *Id.* at ¶ 190

It is with these new, as well as pre-existing, obligations in mind that the Commission must evaluate Verizon's 271 application. From the evidence put forth by Verizon, it appears that market for advanced services is not fully open to competition in Massachusetts. Verizon has not met its nondiscrimination obligations in some key areas required by Rhythms and other CLECs to compete for advanced data services in Massachusetts. Until these obligations are met fully, the Commission must deny Verizon's Application to provide interLATA services in the state of Massachusetts.

II. CHECKLIST ITEM 1 -- INTERCONNECTION

A. Verizon's Collocation at Remote Terminal Tariff Offering Does Not Meet Its Obligations Under Section 271 or the *UNE Remand Order*

In order to provision xDSL services over loops served by fiber, CLECs need to access the copper portion of the loop at the remote terminal, which is the interface between the copper and fiber portions of the loop. Recognizing that "the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office,[37] the *UNE Remand Order* requires that Verizon provide collocation at remote terminals, so that CLECs may offer xDSL service to customers served over DLC facilities.[38] The *UNE Remand Order*, therefore, requires that Verizon provide collocation at remote terminals to requesting CLECs.

Despite this clear requirement, Verizon's application is silent with respect to its collocation at remote terminals offering. This is not surprising. The Massachusetts Department of Telecommunications ("DTE") has commenced a separate proceeding to evaluate Verizon's collocation at remote terminal tariff offering to determine, *inter alia*, whether it complies with the Commission's requirements found in the *UNE Remand Order*. That decision, however, will

37 *UNE Remand Order* at ¶ 218.
38 *Id.*

not be rendered until after this 271 process is complete. Without a record basis to demonstrate its compliance with this obligation, Verizon's 271 application is fatally deficient.

1. Verizon's CRTEE Tariff Offering Is Flawed

According to Verizon's tariff,[39] it fulfills its obligations under the *UNE Remand Order* by offering an unbundled subloop that provides a transmission channel between the CLEC's "Outside Plant Interconnection Cabinet ("TOPIC") and the rate demarcation point at the end of the user location."[40] A TOPIC is a separate interconnection facility that Verizon requires CLECs to install within "100 feet of the FDI on an easement or right of way" to be obtained by the CLEC.[41] A CLEC must then arrange for Verizon to place any cabling between the CLEC-provided demarcation point and any Telephone Company owned cross connect points.[42] Only after the TOPIC is built and interconnection is completed may the CLEC request an unbundled subloop arrangement.[43] Verizon also imposes a time consuming and expensive application process and engineering review before a CLEC can order a subloop from Verizon.[44]

Verizon's collocation at remote terminal tariff offering complies with neither the letter nor the spirit of the Commission's *UNE Remand Order* or Verizon's statutory duties under section 251(c)(6). At the outset, Verizon's subloop definition is wholly inconsistent with the definition of a subloop found in the *UNE Remand Order*. In that Order, the Commission ordered ILECs to provide competitors access to subloop network elements at any technically feasible point,[45] and did not limit subloops to any particular part of the loop, but applied an expansive

39 *See generally*, Tariff 17, Part B § 18.
40 Tariff 17, Part B, § 18.1.1.A.
41 Tariff 17, Part B, § 18.1.3.A & C.
42 Tariff 17, Part B, § 18.1.3.F; 18.1.2.E
43 Tariff 17, Part B, § 18.1.2.E.
44 Tariff 17, Part B, § 18.1.2.B & C.
45 BA-MA Supplemental Comments at 35-36;

definition which includes "any portion of the loop."[46] A "broad definition of the subloop" was applied so that "requesting carriers [would have] maximum flexibility to interconnect their own facilities" at technically feasible points to "best promote the goals of the Act."[47]

Despite these clear mandates from the Commission, Verizon's offering unilaterally limits the subloop UNE to only the "metallic distribution pairs/facilities" at the Verizon FDI.[48] There is nothing in the FCC's *UNE Remand Order* that limits the subloop to only the copper distribution portion of the loop. Moreover, Verizon's qualification that subloops only include those pairs at Verizon's FDI is at odds with the Commission's specific findings that CLECs may access subloop at any number of technically feasible points, including NIDs, MDFs, MPOIs, RTs, SPOIs and FDIs.[49]

In addition, Verizon's definition of Remote Terminal Equipment Enclosures ("RTEEs") attempts to limit the types of enclosures at which it will provide remote terminal collocation, by defining RTEEs as "controlled environmental vaults ("CEVs"), huts, cabinets, and remote terminals *in buildings* not owned by the Telephone Company."[50] By adding the term "in buildings" Verizon is limiting the types of enclosures subject to its CRTEE tariff by excluding manholes and other non-building structures where remote terminal equipment is often enclosed, because "huts" and "cabinets" are generally not "in buildings", but are located in the field.

Finally, the requirement that CLECs build a separate TOPIC at every Verizon remote terminal serving customers that Rhythms seeks to serve would be prohibitively expensive, and in fact flat-out economically irrational for Rhythms.[51] In collocating at the central offices across the

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46 *UNE Remand Order* at ¶ 207.
47 *UNE Remand Order* at ¶ 207.
48 Tariff 17, Part B, Section 18.1.1.A.
49 47 CFR § 51.319(a)(2).
50 Tariff 17, Part E, § 11.1.1.A.2. (emphasis added).
51 Williams Declaration at ¶ 11.

state, Rhythms already invested substantial sums of money -- **BEGIN PROPRIETARY *** ************ END PROPRIETARY**-- to serve Massachusetts' consumers.[52] To require Rhythms to build TOPICs to interconnect equipment at the many remote terminals in the state raises significant barriers to Rhythms' ability to compete and continue to service the DSL needs of the consumers of Massachusetts.[53] As the Commission is aware, remote terminals serve far fewer customer than a central office – in some cases just 100 or 200 customer locations.[54] For Rhythms to invest again in TOPIC remote terminal interconnection to serve this relatively limited number of customers would not be an economically rational decision as the cost of collocating at remote terminals pursuant to Verizon's tariff is prohibitively expensive and would make profitable operations unattainable for many years.[55]

Verizon's current offering therefore provides CLECs with few realistic alternatives. Its practical effect is to strand CLECs at the remote terminal because there is no fiber feeder subloop offering. CLECs are not permitted to place line cards in equipment that is actually collocated at the remote terminal, and in fact, CLECs can not even access the remote terminal in any meaningful way. This is hardly what the Commission must have meant when it provided for collocation at remote terminals in its *UNE Remand Order*.[56]

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52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.*
56 *UNE Remand Order* at ¶ 218.

2. Verizon Has Not Responded to CLECs Concerns

Rhythms and other CLECs raised these very concerns with Verizon following the DTE's *Tariff 17 Decision*, in which the DTE required that Verizon provide collocation at remote terminals in Massachusetts consistent with the *UNE Remand Order.*[57] That decision was released on March 24, 2000, and almost immediately Rhythms commenced requesting the methods and procedures by which it could collocate its DSLAM equipment at Verizon's remote terminals in Massachusetts.[58] On May 25th, however, Verizon issued it tariff offering that purported to comply with the DTE's directives in the *Tariff 17 Decision.* The terms contained in that tariff are the same terms discussed herein, and as a result, after May 24, Rhythms pursued this issue with the DTE (by filing comments on Verizon's Compliance with the *Tariff 17 Decision*).

The DTE eventually responded by opening up a new proceeding to address, *inter alia*, Verizon's subloop and CRTEE tariff offerings. In addition, the DTE recently ordered that Verizon amend its tariff to provide an offering that would allow CLECs to plug line cards into DSLAM equipment that is located at remote terminals.[59] While these efforts are ongoing and will not be finally determined until perhaps the first quarter of 2001, Verizon chose to submit its application to the Commission when it did. As the application is "final when filed" pursuant to Commission precedent,[60] Verizon's application must be evaluated in light of its current collocation at remote terminal offering described above. That offering does not comply with the *UNE Remand Order* and does not provide an offering that Rhythms and other CLECs could

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57 Williams Declaration at ¶ 9.

58 *Id.*

59 Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in Massachusetts D.T.E. No. 17, filed with the Department by Verizon New England, d/b/a Verizon Massachusetts, on May 5, and June 15, 2000 to become effective October 2, 2000 in D.T.E. 98-58-Phase III (rel. Sept. 29, 2000) at 86-89.

reasonably and economically use to collocate at remote terminals. The Commission must therefore deny Verizon's Application and in doing so, reiterate its requirements for providing collocation at remote terminals.

B. Verizon Refuses to Provide In-Place Conversion of Virtual Collocation Arrangements to Physical Arrangements as it Does in New York

In its application, Verizon indicates that it "provides competitors in Massachusetts with collocation in essentially the same manner as it does in New York."[61] The collocation offerings in the two states are different, however, in one very important respect. In New York, Verizon's tariff offering provides for in-place conversions from virtual collocation to physical collocation. In Massachusetts, Verizon has refused to duplicate this offering. Initially, the DTE ordered Verizon to provide in-place conversions,[62] but has stayed aspects of that order pending the Commission's further rule making following remand by the D.C. Circuit in *GTE Service Corp. v. Federal Communications Commission.*[63]

The failure to provide in-place conversions in Massachusetts is a serious issue for Rhythms that has had some very real business implications.[64] In Massachusetts, Rhythms has two virtual collocation arrangements, at the Westborough and Westford central offices.[65]

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60 *See e.g., Bell Atlantic New York Order* at ¶ 34.

61 Verizon Application at 13.

62 *D.T.E. Tariff 17 Decision* (rel. March 24, 2000).

63 *See*, Order on Motion of Verizon for Reconsideration and Clarification, D.T.E. 98-57 Phase I, (rel. Sept. 7, 2000) at 13 ("while we disagree with Verizon's claim that GTE put to rest any doubt regarding an ILEC's right to separate its equipment, we acknowledge that Verizon's motion for reconsideration on the issues of commingling of Verizon and CLEC equipment, including virtual to cageless conversions, has merit. . . . The Court indicated that the FCC will have the opportunity, on remand, to refine its regulatory requirements. Id. The FCC has requested comment on this issue, but, at the present time, it is uncertain as to how the FCC will refine its rules on separation of equipment. Therefore, we agree with Verizon that a stay of our directives is warranted regarding commingling of equipment, virtual to cageless conversions, and regarding Verizon's removal of the reference to the construction of a separate room. The stay is pending the FCC's final decision on this issue.")

64 Williams Declaration at ¶¶ 15-17.

65 *Id.* at ¶ 15.

Rhythms has requested that each of these virtual arrangements be converted, in place, to physical collocation arrangements.[66] Verizon, however, has refused theses requests.[67]

The fact that these two arrangements are virtuals instead of physicals came to a head in July, 2000, when Rhythms experienced a number of customer outages that were traced to equipment problems in these two virtual collocation sites.[68] While Rhythms had provided the necessary training for Verizon's technicians on the maintenance and repair of its virtually collocated equipment, Verizon was unable to fix the problems.[69] After several days of outages and with a number of Rhythms' customers out-of-service, Verizon agreed to allow a Rhythms' technician to come into its central office and make the necessary equipment replacements within a matter of hours.[70]

Rhythms experienced these problems over a period of three days, where customers were without service.[71] During that time-frame, there were over 50 trouble tickets reported from Rhythms' customers at these two central offices.[72] At least 20 of those trouble tickets can be directly traced to the problems with the equipment in the virtual collocation arrangement.[73] The others troubles may or may not have been associated with these equipment problems.[74]

The competitive implications of these outages will be felt, however, far more broadly than with just those customers.[75] Consumers often purchase DSL services based on the recommendations of their friends and neighbors.[76] If Rhythms existing customers in Westford

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66 *Id.* at ¶ 14.
67 *Id.*
68 *Id.* at ¶ 15
69 *Id.*
70 *Id.*
71 *Id.* at ¶¶ 15-16.
72 *Id.* at ¶ 16 .
73 *Id.*
74 *Id.*
75 *Id.* at ¶ 17.
76 *Id.*

and Westborough are not satisfied with their DSL service, the likelihood of Rhythms continuing to grow its presence in these markets is slim.[77]

Notwithstanding requests from Rhythms to convert these virtual arrangements, Verizon continually has refused to implement these conversions in Massachusetts.[78] There is no issue of technical feasibility because Verizon does such conversions in New York. Verizon's position is that CLECs must move their virtual collocations to a secure area of the central office to convert these arrangements to cageless collocations.[79] In stark contrast to that position, Verizon-NY's tariff includes an offering for in-place conversions from virtual collocation to cageless collocation.[80] In fact, Verizon-NY has been providing virtual to cageless conversions in New York under a tariff since December, 1999.[81] Nevertheless, Verizon refuses to make the same offering available in Massachusetts – conversions that would require a simple paper transfer on Verizon's part.[82]

While in-place conversions are accomplished through paperwork, moving a collocation from one place in the central office to another is unnecessarily costly, time-consuming, and disruptive to customer service.[83] To perform a full conversion (rather than an in-place conversion) in Massachusetts would require Rhythms to: (1) place an application for collocation with Verizon and await the standard interval; (2) incur the costs of purchasing redundant

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77 *Id.*

78 *Id.* at ¶ 14.

79 *Id.* at ¶ 13.

80 *See* New York Telephone Company, P.S.C. No. 914, Section 5, 1st Revised Page 85.

81 BA-NY has been providing in place conversions in New York under a tariff since December, 1999. *See* New York Telephone Company, P.S.C. No. 914, Section 5, 1st Revised Page 85. Because Rhythms has no virtual collocation arrangements in New York, it has not needed to take advantage of this tariff offering.

82 The conversion from a virtual collocation arrangement to a CCOE merely reclassifies an existing arrangement, permitting CLECs greater operational flexibility. Therefore, if space is available for a virtual collocation arrangement, space also is available for a CCOE arrangement.

83 Williams Declaration at ¶ 13.

equipment to install in the new area to flash cut service from one collocation to another; and (3) disrupt customer service while the conversion occurs.[84]

The Commission must address this situation prior to Verizon's section 271 approval in Massachusetts. Without the ability to perform in-place conversions of these two collocation arrangements, Rhythms will continue to be hampered in its ability to control and repair its equipment, which, as the example above demonstrates, is essential for effectively serving its customers.

C. Verizon's Collocation Power Charges Are Excessive and Out of Line With Industry Practice

Powering collocated equipment is becoming an increasingly expensive proposition for many CLECs, including Rhythms. ILECs, including Verizon, charge CLECs a monthly recurring charge to power CLEC collocated equipment. The charges are listed in state and federal tariffs filed by the ILEC.

While it is industry practice for ILECs to fuse, or make available, power for CLEC collocated equipment at an amount above what a CLEC requests, Verizon appears to be one of the only ILECs that charges CLECs based on the fused amps provided rather than the equipment load (*i.e.*, the number of amps requested by the CLEC).[85] For example, most of Rhythms collocated equipment runs on 40 amps of power, thus Rhythms will request 40 amps of power from Verizon and other ILECs.[86] Verizon and other ILECs, in turn, will provide a fuse that can carry up to 1.5 times the load requested by Rhythms.[87] Thus, most of Rhythms equipment is fused at 60 amps by the ILEC. Most ILECs, however, charge Rhythms a monthly recurring charge based on the amp that Rhythms requests. Verizon, on the other hand, charges a monthly

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84 *Id.*

85 *Id.* at ¶ 21.

86 *Id* at ¶ 19.

recurring charge based on the amps that it fuses to Rhythms.[88] That is, Verizon charges for collocation power based on the capacity it provides, rather than the amount of power requested by Rhythms.

This issue is exacerbated, however, when Rhythms' power redundancies are taken into account. While most CLECs power their collocation equipment using both an "A" and a "B" feed to provide system redundancies in instances of power outages, Rhythms often requests redundancies beyond these standards to ensure minimal service disruptions for Rhythms' customers and to protect Rhythms' collocated equipment.[89] Consequently, because Verizon's monthly recurring charge is based on amps fused, Rhythms often is paying for 240 amps of power each month when the equipment that is being powered can only use 40 amps of power.[90] Between charging for fused power versus ordered power, and then charging for fused power on the redundant feed, Verizon's power collocation charges are unreasonably bloated.

Rhythms raised the collocation power issue in the 271 proceeding in Massachusetts and was told that Verizon charges rates that were approved by the DTE.[91] ALTS raised this issue with Verizon and was provided with a similar response to its inquiry. Verizon's rates for collocation power are contained in its state and federal tariffs, but is policy of charging based on fused power is not mentioned in those documents. Verizon's state tariff indicates that Verizon charges "per amp, per feed"[92] but its federal tariff, from which Rhythms orders power, indicates only that the charge is "per amp."[93]

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87 *Id.* at ¶ 20.
88 *Id.* at ¶ 21.
89 *Id.*
90 *Id.*
91 Tr. at 4274.
92 Tariff 17, Part M, § 5.3.8.
93 Federal Tariff 11, § 31.28.1(B)(3).

Any claims by Verizon that it must charge for 60 amps because to do otherwise might allow CLECs to pilfer the additional 20 amps that Verizon fuses must be dismissed outright. First, Rhythms collocated equipment can only drain 40 amps of power.[94] If, however, Rhythms hypothetically were to install more powerful equipment, the 60 amp fuse would not support the equipment, because a 60 amp fuse "blows" before the fuse reaches 60 amps. In fact, a 60 amp fuse can "blow" when as little as 47 amps are drained. The bottom line is that a 60 amp fuse cannot support 60 amps of power – that is why Verizon fuses at 1.5 times the amount of power requested by a CLEC Rhythms requests that the FCC recognize that Verizon's practice of charging for fused amps rather than load and for the redundant feeds is not consistent with a competitive environment. Rhythms and other CLECs are paying Verizon for power that they can never utilize each month and Verizon is gaining windfall profits while increasing CLECs costs of providing services. Such behavior is patently anticompetitive and should not be rewarded by this Commission with 271 authorization.

III. CHECKLIST ITEM 2 – OSS

A. Verizon Has a Legal Obligation to Provide CLECs With Nondiscriminatory Access to OSS

The provision of nondiscriminatory access to OSS "falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable."[95] As a result, the Commission has determined that an ILEC's OSS performance must be evaluated under checklist items 2.[96] "For OSS function that are

94 Williams Declaration at ¶ 19.
95 Bell Atlantic New York Order at ¶ 84 (citations omitted).
96 *Id.*